



Rep. Barbara Flynn Currie

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09800HB5684ham002

LRB098 16363 HLH 57851 a

1 AMENDMENT TO HOUSE BILL 5684

2 AMENDMENT NO. _____. Amend House Bill 5684 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. If and only if House Bill 2317 of the 98th
5 General Assembly becomes law, then the Use Tax Act is amended
6 by changing Section 2 as follows:

7 (35 ILCS 105/2) (from Ch. 120, par. 439.2)

8 Sec. 2. "Use" means the exercise by any person of any right
9 or power over tangible personal property incident to the
10 ownership of that property, except that it does not include the
11 sale of such property in any form as tangible personal property
12 in the regular course of business to the extent that such
13 property is not first subjected to a use for which it was
14 purchased, and does not include the use of such property by its
15 owner for demonstration purposes: Provided that the property
16 purchased is deemed to be purchased for the purpose of resale,

1 despite first being used, to the extent to which it is resold
2 as an ingredient of an intentionally produced product or
3 by-product of manufacturing. "Use" does not mean the
4 demonstration use or interim use of tangible personal property
5 by a retailer before he sells that tangible personal property.
6 For watercraft or aircraft, if the period of demonstration use
7 or interim use by the retailer exceeds 18 months, the retailer
8 shall pay on the retailers' original cost price the tax imposed
9 by this Act, and no credit for that tax is permitted if the
10 watercraft or aircraft is subsequently sold by the retailer.
11 "Use" does not mean the physical incorporation of tangible
12 personal property, to the extent not first subjected to a use
13 for which it was purchased, as an ingredient or constituent,
14 into other tangible personal property (a) which is sold in the
15 regular course of business or (b) which the person
16 incorporating such ingredient or constituent therein has
17 undertaken at the time of such purchase to cause to be
18 transported in interstate commerce to destinations outside the
19 State of Illinois: Provided that the property purchased is
20 deemed to be purchased for the purpose of resale, despite first
21 being used, to the extent to which it is resold as an
22 ingredient of an intentionally produced product or by-product
23 of manufacturing.

24 "Watercraft" means a Class 2, Class 3, or Class 4
25 watercraft as defined in Section 3-2 of the Boat Registration
26 and Safety Act, a personal watercraft, or any boat equipped

1 with an inboard motor.

2 "Purchase at retail" means the acquisition of the ownership
3 of or title to tangible personal property through a sale at
4 retail.

5 "Purchaser" means anyone who, through a sale at retail,
6 acquires the ownership of tangible personal property for a
7 valuable consideration.

8 "Sale at retail" means any transfer of the ownership of or
9 title to tangible personal property to a purchaser, for the
10 purpose of use, and not for the purpose of resale in any form
11 as tangible personal property to the extent not first subjected
12 to a use for which it was purchased, for a valuable
13 consideration: Provided that the property purchased is deemed
14 to be purchased for the purpose of resale, despite first being
15 used, to the extent to which it is resold as an ingredient of
16 an intentionally produced product or by-product of
17 manufacturing. For this purpose, slag produced as an incident
18 to manufacturing pig iron or steel and sold is considered to be
19 an intentionally produced by-product of manufacturing. "Sale
20 at retail" includes any such transfer made for resale unless
21 made in compliance with Section 2c of the Retailers' Occupation
22 Tax Act, as incorporated by reference into Section 12 of this
23 Act. Transactions whereby the possession of the property is
24 transferred but the seller retains the title as security for
25 payment of the selling price are sales.

26 "Sale at retail" shall also be construed to include any

1 Illinois florist's sales transaction in which the purchase
2 order is received in Illinois by a florist and the sale is for
3 use or consumption, but the Illinois florist has a florist in
4 another state deliver the property to the purchaser or the
5 purchaser's donee in such other state.

6 Nonreusable tangible personal property that is used by
7 persons engaged in the business of operating a restaurant,
8 cafeteria, or drive-in is a sale for resale when it is
9 transferred to customers in the ordinary course of business as
10 part of the sale of food or beverages and is used to deliver,
11 package, or consume food or beverages, regardless of where
12 consumption of the food or beverages occurs. Examples of those
13 items include, but are not limited to nonreusable, paper and
14 plastic cups, plates, baskets, boxes, sleeves, buckets or other
15 containers, utensils, straws, placemats, napkins, doggie bags,
16 and wrapping or packaging materials that are transferred to
17 customers as part of the sale of food or beverages in the
18 ordinary course of business.

19 The purchase, employment and transfer of such tangible
20 personal property as newsprint and ink for the primary purpose
21 of conveying news (with or without other information) is not a
22 purchase, use or sale of tangible personal property.

23 "Selling price" means the consideration for a sale valued
24 in money whether received in money or otherwise, including
25 cash, credits, property other than as hereinafter provided, and
26 services, but not including the value of or credit given for

1 traded-in tangible personal property where the item that is
2 traded-in is of like kind and character as that which is being
3 sold, and shall be determined without any deduction on account
4 of the cost of the property sold, the cost of materials used,
5 labor or service cost or any other expense whatsoever, but does
6 not include interest or finance charges which appear as
7 separate items on the bill of sale or sales contract nor
8 charges that are added to prices by sellers on account of the
9 seller's tax liability under the "Retailers' Occupation Tax
10 Act", or on account of the seller's duty to collect, from the
11 purchaser, the tax that is imposed by this Act, or, except as
12 otherwise provided with respect to any cigarette tax imposed by
13 a home rule unit, on account of the seller's tax liability
14 under any local occupation tax administered by the Department,
15 or, except as otherwise provided with respect to any cigarette
16 tax imposed by a home rule unit on account of the seller's duty
17 to collect, from the purchasers, the tax that is imposed under
18 any local use tax administered by the Department. Effective
19 December 1, 1985, "selling price" shall include charges that
20 are added to prices by sellers on account of the seller's tax
21 liability under the Cigarette Tax Act, on account of the
22 seller's duty to collect, from the purchaser, the tax imposed
23 under the Cigarette Use Tax Act, and on account of the seller's
24 duty to collect, from the purchaser, any cigarette tax imposed
25 by a home rule unit.

26 Notwithstanding any law to the contrary, for any motor

1 vehicle, as defined in Section 1-146 of the Vehicle Code, that
2 is sold on or after January 1, 2015 ~~July 1, 2014~~ for the
3 purpose of leasing the vehicle for a defined period that is
4 longer than one year and (1) is a motor vehicle of the second
5 division that: (A) is a self-contained motor vehicle designed
6 or permanently converted to provide living quarters for
7 recreational, camping, or travel use, with direct walk through
8 access to the living quarters from the driver's seat; (B) is of
9 the van configuration designed for the transportation of not
10 less than 7 nor more than 16 passengers; or (C) has a gross
11 vehicle weight rating of 8,000 pounds or less or (2) is a motor
12 vehicle of the first division, "selling price" or "amount of
13 sale" means the consideration received by the lessor pursuant
14 to the lease contract, including amounts due at lease signing
15 and all monthly or other regular payments charged over the term
16 of the lease. Also included in the selling price is any amount
17 received by the lessor from the lessee for the leased vehicle
18 that is not calculated at the time the lease is executed,
19 including, but not limited to, excess mileage charges and
20 charges for excess wear and tear. For sales that occur in
21 Illinois, with respect to any amount received by the lessor
22 from the lessee for the leased vehicle that is not calculated
23 at the time the lease is executed, the lessor who purchased the
24 motor vehicle does not incur the tax imposed by the Use Tax Act
25 on those amounts, and the retailer who makes the retail sale of
26 the motor vehicle to the lessor is not required to collect the

1 tax imposed by this Act or to pay the tax imposed by the
2 Retailers' Occupation Tax Act on those amounts. However, the
3 lessor who purchased the motor vehicle assumes the liability
4 for reporting and paying the tax on those amounts directly to
5 the Department in the same form (Illinois Retailers' Occupation
6 Tax, and local retailers' occupation taxes, if applicable) in
7 which the retailer would have reported and paid such tax if the
8 retailer had accounted for the tax to the Department. For
9 amounts received by the lessor from the lessee that are not
10 calculated at the time the lease is executed, the lessor must
11 file the return and pay the tax to the Department by the due
12 date otherwise required by this Act for returns other than
13 transaction returns. If the retailer is entitled under this Act
14 to a discount for collecting and remitting the tax imposed
15 under this Act to the Department with respect to the sale of
16 the motor vehicle to the lessor, then the right to the discount
17 provided in this Act shall be transferred to the lessor with
18 respect to the tax paid by the lessor for any amount received
19 by the lessor from the lessee for the leased vehicle that is
20 not calculated at the time the lease is executed; provided that
21 the discount is only allowed if the return is timely filed and
22 for amounts timely paid. The "selling price" of a motor vehicle
23 that is sold on or after January 1, 2015 ~~July 1, 2014~~ for the
24 purpose of leasing for a defined period of longer than one year
25 shall not be reduced by the value of or credit given for
26 traded-in tangible personal property owned by the lessor, nor

1 shall it be reduced by the value of or credit given for
2 traded-in tangible personal property owned by the lessee,
3 regardless of whether the trade-in value thereof is assigned by
4 the lessee to the lessor. In the case of a motor vehicle that
5 is sold for the purpose of leasing for a defined period of
6 longer than one year, the sale occurs at the time of the
7 delivery of the vehicle, regardless of the due date of any
8 lease payments. A lessor who incurs a Retailers' Occupation Tax
9 liability on the sale of a motor vehicle coming off lease may
10 not take a credit against that liability for the Use Tax the
11 lessor paid upon the purchase of the motor vehicle (or for any
12 tax the lessor paid with respect to any amount received by the
13 lessor from the lessee for the leased vehicle that was not
14 calculated at the time the lease was executed) if the selling
15 price of the motor vehicle at the time of purchase was
16 calculated using the definition of "selling price" as defined
17 in this paragraph. Notwithstanding any other provision of this
18 Act to the contrary, lessors shall file all returns and make
19 all payments required under this paragraph to the Department by
20 electronic means in the manner and form as required by the
21 Department. This paragraph does not apply to leases of motor
22 vehicles for which, at the time the lease is entered into, the
23 term of the lease is not a defined period, including leases
24 with a defined initial period with the option to continue the
25 lease on a month-to-month or other basis beyond the initial
26 defined period.

1 The phrase "like kind and character" shall be liberally
2 construed (including but not limited to any form of motor
3 vehicle for any form of motor vehicle, or any kind of farm or
4 agricultural implement for any other kind of farm or
5 agricultural implement), while not including a kind of item
6 which, if sold at retail by that retailer, would be exempt from
7 retailers' occupation tax and use tax as an isolated or
8 occasional sale.

9 "Department" means the Department of Revenue.

10 "Person" means any natural individual, firm, partnership,
11 association, joint stock company, joint adventure, public or
12 private corporation, limited liability company, or a receiver,
13 executor, trustee, guardian or other representative appointed
14 by order of any court.

15 "Retailer" means and includes every person engaged in the
16 business of making sales at retail as defined in this Section.

17 A person who holds himself or herself out as being engaged
18 (or who habitually engages) in selling tangible personal
19 property at retail is a retailer hereunder with respect to such
20 sales (and not primarily in a service occupation)
21 notwithstanding the fact that such person designs and produces
22 such tangible personal property on special order for the
23 purchaser and in such a way as to render the property of value
24 only to such purchaser, if such tangible personal property so
25 produced on special order serves substantially the same
26 function as stock or standard items of tangible personal

1 property that are sold at retail.

2 A person whose activities are organized and conducted
3 primarily as a not-for-profit service enterprise, and who
4 engages in selling tangible personal property at retail
5 (whether to the public or merely to members and their guests)
6 is a retailer with respect to such transactions, excepting only
7 a person organized and operated exclusively for charitable,
8 religious or educational purposes either (1), to the extent of
9 sales by such person to its members, students, patients or
10 inmates of tangible personal property to be used primarily for
11 the purposes of such person, or (2), to the extent of sales by
12 such person of tangible personal property which is not sold or
13 offered for sale by persons organized for profit. The selling
14 of school books and school supplies by schools at retail to
15 students is not "primarily for the purposes of" the school
16 which does such selling. This paragraph does not apply to nor
17 subject to taxation occasional dinners, social or similar
18 activities of a person organized and operated exclusively for
19 charitable, religious or educational purposes, whether or not
20 such activities are open to the public.

21 A person who is the recipient of a grant or contract under
22 Title VII of the Older Americans Act of 1965 (P.L. 92-258) and
23 serves meals to participants in the federal Nutrition Program
24 for the Elderly in return for contributions established in
25 amount by the individual participant pursuant to a schedule of
26 suggested fees as provided for in the federal Act is not a

1 retailer under this Act with respect to such transactions.

2 Persons who engage in the business of transferring tangible
3 personal property upon the redemption of trading stamps are
4 retailers hereunder when engaged in such business.

5 The isolated or occasional sale of tangible personal
6 property at retail by a person who does not hold himself out as
7 being engaged (or who does not habitually engage) in selling
8 such tangible personal property at retail or a sale through a
9 bulk vending machine does not make such person a retailer
10 hereunder. However, any person who is engaged in a business
11 which is not subject to the tax imposed by the "Retailers'
12 Occupation Tax Act" because of involving the sale of or a
13 contract to sell real estate or a construction contract to
14 improve real estate, but who, in the course of conducting such
15 business, transfers tangible personal property to users or
16 consumers in the finished form in which it was purchased, and
17 which does not become real estate, under any provision of a
18 construction contract or real estate sale or real estate sales
19 agreement entered into with some other person arising out of or
20 because of such nontaxable business, is a retailer to the
21 extent of the value of the tangible personal property so
22 transferred. If, in such transaction, a separate charge is made
23 for the tangible personal property so transferred, the value of
24 such property, for the purposes of this Act, is the amount so
25 separately charged, but not less than the cost of such property
26 to the transferor; if no separate charge is made, the value of

1 such property, for the purposes of this Act, is the cost to the
2 transferor of such tangible personal property.

3 "Retailer maintaining a place of business in this State",
4 or any like term, means and includes any of the following
5 retailers:

6 1. A retailer having or maintaining within this State,
7 directly or by a subsidiary, an office, distribution house,
8 sales house, warehouse or other place of business, or any
9 agent or other representative operating within this State
10 under the authority of the retailer or its subsidiary,
11 irrespective of whether such place of business or agent or
12 other representative is located here permanently or
13 temporarily, or whether such retailer or subsidiary is
14 licensed to do business in this State. However, the
15 ownership of property that is located at the premises of a
16 printer with which the retailer has contracted for printing
17 and that consists of the final printed product, property
18 that becomes a part of the final printed product, or copy
19 from which the printed product is produced shall not result
20 in the retailer being deemed to have or maintain an office,
21 distribution house, sales house, warehouse, or other place
22 of business within this State.

23 1.1. Beginning July 1, 2011, a retailer having a
24 contract with a person located in this State under which
25 the person, for a commission or other consideration based
26 upon the sale of tangible personal property by the

1 retailer, directly or indirectly refers potential
2 customers to the retailer by a link on the person's
3 Internet website. The provisions of this paragraph 1.1
4 shall apply only if the cumulative gross receipts from
5 sales of tangible personal property by the retailer to
6 customers who are referred to the retailer by all persons
7 in this State under such contracts exceed \$10,000 during
8 the preceding 4 quarterly periods ending on the last day of
9 March, June, September, and December.

10 1.2. Beginning July 1, 2011, a retailer having a
11 contract with a person located in this State under which:

12 A. the retailer sells the same or substantially
13 similar line of products as the person located in this
14 State and does so using an identical or substantially
15 similar name, trade name, or trademark as the person
16 located in this State; and

17 B. the retailer provides a commission or other
18 consideration to the person located in this State based
19 upon the sale of tangible personal property by the
20 retailer.

21 The provisions of this paragraph 1.2 shall apply only if
22 the cumulative gross receipts from sales of tangible
23 personal property by the retailer to customers in this
24 State under all such contracts exceed \$10,000 during the
25 preceding 4 quarterly periods ending on the last day of
26 March, June, September, and December.

1 2. A retailer soliciting orders for tangible personal
2 property by means of a telecommunication or television
3 shopping system (which utilizes toll free numbers) which is
4 intended by the retailer to be broadcast by cable
5 television or other means of broadcasting, to consumers
6 located in this State.

7 3. A retailer, pursuant to a contract with a
8 broadcaster or publisher located in this State, soliciting
9 orders for tangible personal property by means of
10 advertising which is disseminated primarily to consumers
11 located in this State and only secondarily to bordering
12 jurisdictions.

13 4. A retailer soliciting orders for tangible personal
14 property by mail if the solicitations are substantial and
15 recurring and if the retailer benefits from any banking,
16 financing, debt collection, telecommunication, or
17 marketing activities occurring in this State or benefits
18 from the location in this State of authorized installation,
19 servicing, or repair facilities.

20 5. A retailer that is owned or controlled by the same
21 interests that own or control any retailer engaging in
22 business in the same or similar line of business in this
23 State.

24 6. A retailer having a franchisee or licensee operating
25 under its trade name if the franchisee or licensee is
26 required to collect the tax under this Section.

1 7. A retailer, pursuant to a contract with a cable
2 television operator located in this State, soliciting
3 orders for tangible personal property by means of
4 advertising which is transmitted or distributed over a
5 cable television system in this State.

6 8. A retailer engaging in activities in Illinois, which
7 activities in the state in which the retail business
8 engaging in such activities is located would constitute
9 maintaining a place of business in that state.

10 "Bulk vending machine" means a vending machine, containing
11 unsorted confections, nuts, toys, or other items designed
12 primarily to be used or played with by children which, when a
13 coin or coins of a denomination not larger than \$0.50 are
14 inserted, are dispensed in equal portions, at random and
15 without selection by the customer.

16 (Source: P.A. 95-723, eff. 6-23-08; 96-1544, eff. 3-10-11;
17 09800HB2317enr.)

18 Section 10. If and only if House Bill 2317 of the 98th
19 General Assembly becomes law, then the Retailers' Occupation
20 Tax Act is amended by changing Section 1 as follows:

21 (35 ILCS 120/1) (from Ch. 120, par. 440)

22 Sec. 1. Definitions. "Sale at retail" means any transfer of
23 the ownership of or title to tangible personal property to a
24 purchaser, for the purpose of use or consumption, and not for

1 the purpose of resale in any form as tangible personal property
2 to the extent not first subjected to a use for which it was
3 purchased, for a valuable consideration: Provided that the
4 property purchased is deemed to be purchased for the purpose of
5 resale, despite first being used, to the extent to which it is
6 resold as an ingredient of an intentionally produced product or
7 byproduct of manufacturing. For this purpose, slag produced as
8 an incident to manufacturing pig iron or steel and sold is
9 considered to be an intentionally produced byproduct of
10 manufacturing. Transactions whereby the possession of the
11 property is transferred but the seller retains the title as
12 security for payment of the selling price shall be deemed to be
13 sales.

14 "Sale at retail" shall be construed to include any transfer
15 of the ownership of or title to tangible personal property to a
16 purchaser, for use or consumption by any other person to whom
17 such purchaser may transfer the tangible personal property
18 without a valuable consideration, and to include any transfer,
19 whether made for or without a valuable consideration, for
20 resale in any form as tangible personal property unless made in
21 compliance with Section 2c of this Act.

22 Sales of tangible personal property, which property, to the
23 extent not first subjected to a use for which it was purchased,
24 as an ingredient or constituent, goes into and forms a part of
25 tangible personal property subsequently the subject of a "Sale
26 at retail", are not sales at retail as defined in this Act:

1 Provided that the property purchased is deemed to be purchased
2 for the purpose of resale, despite first being used, to the
3 extent to which it is resold as an ingredient of an
4 intentionally produced product or byproduct of manufacturing.

5 "Sale at retail" shall be construed to include any Illinois
6 florist's sales transaction in which the purchase order is
7 received in Illinois by a florist and the sale is for use or
8 consumption, but the Illinois florist has a florist in another
9 state deliver the property to the purchaser or the purchaser's
10 donee in such other state.

11 Nonreusable tangible personal property that is used by
12 persons engaged in the business of operating a restaurant,
13 cafeteria, or drive-in is a sale for resale when it is
14 transferred to customers in the ordinary course of business as
15 part of the sale of food or beverages and is used to deliver,
16 package, or consume food or beverages, regardless of where
17 consumption of the food or beverages occurs. Examples of those
18 items include, but are not limited to nonreusable, paper and
19 plastic cups, plates, baskets, boxes, sleeves, buckets or other
20 containers, utensils, straws, placemats, napkins, doggie bags,
21 and wrapping or packaging materials that are transferred to
22 customers as part of the sale of food or beverages in the
23 ordinary course of business.

24 The purchase, employment and transfer of such tangible
25 personal property as newsprint and ink for the primary purpose
26 of conveying news (with or without other information) is not a

1 purchase, use or sale of tangible personal property.

2 A person whose activities are organized and conducted
3 primarily as a not-for-profit service enterprise, and who
4 engages in selling tangible personal property at retail
5 (whether to the public or merely to members and their guests)
6 is engaged in the business of selling tangible personal
7 property at retail with respect to such transactions, excepting
8 only a person organized and operated exclusively for
9 charitable, religious or educational purposes either (1), to
10 the extent of sales by such person to its members, students,
11 patients or inmates of tangible personal property to be used
12 primarily for the purposes of such person, or (2), to the
13 extent of sales by such person of tangible personal property
14 which is not sold or offered for sale by persons organized for
15 profit. The selling of school books and school supplies by
16 schools at retail to students is not "primarily for the
17 purposes of" the school which does such selling. The provisions
18 of this paragraph shall not apply to nor subject to taxation
19 occasional dinners, socials or similar activities of a person
20 organized and operated exclusively for charitable, religious
21 or educational purposes, whether or not such activities are
22 open to the public.

23 A person who is the recipient of a grant or contract under
24 Title VII of the Older Americans Act of 1965 (P.L. 92-258) and
25 serves meals to participants in the federal Nutrition Program
26 for the Elderly in return for contributions established in

1 amount by the individual participant pursuant to a schedule of
2 suggested fees as provided for in the federal Act is not
3 engaged in the business of selling tangible personal property
4 at retail with respect to such transactions.

5 "Purchaser" means anyone who, through a sale at retail,
6 acquires the ownership of or title to tangible personal
7 property for a valuable consideration.

8 "Reseller of motor fuel" means any person engaged in the
9 business of selling or delivering or transferring title of
10 motor fuel to another person other than for use or consumption.
11 No person shall act as a reseller of motor fuel within this
12 State without first being registered as a reseller pursuant to
13 Section 2c or a retailer pursuant to Section 2a.

14 "Selling price" or the "amount of sale" means the
15 consideration for a sale valued in money whether received in
16 money or otherwise, including cash, credits, property, other
17 than as hereinafter provided, and services, but not including
18 the value of or credit given for traded-in tangible personal
19 property where the item that is traded-in is of like kind and
20 character as that which is being sold, and shall be determined
21 without any deduction on account of the cost of the property
22 sold, the cost of materials used, labor or service cost or any
23 other expense whatsoever, but does not include charges that are
24 added to prices by sellers on account of the seller's tax
25 liability under this Act, or on account of the seller's duty to
26 collect, from the purchaser, the tax that is imposed by the Use

1 Tax Act, or, except as otherwise provided with respect to any
2 cigarette tax imposed by a home rule unit, on account of the
3 seller's tax liability under any local occupation tax
4 administered by the Department, or, except as otherwise
5 provided with respect to any cigarette tax imposed by a home
6 rule unit on account of the seller's duty to collect, from the
7 purchasers, the tax that is imposed under any local use tax
8 administered by the Department. Effective December 1, 1985,
9 "selling price" shall include charges that are added to prices
10 by sellers on account of the seller's tax liability under the
11 Cigarette Tax Act, on account of the sellers' duty to collect,
12 from the purchaser, the tax imposed under the Cigarette Use Tax
13 Act, and on account of the seller's duty to collect, from the
14 purchaser, any cigarette tax imposed by a home rule unit.

15 Notwithstanding any law to the contrary, for any motor
16 vehicle, as defined in Section 1-146 of the Vehicle Code, that
17 is sold on or after January 1, 2015 ~~July 1, 2014~~ for the
18 purpose of leasing the vehicle for a defined period that is
19 longer than one year and (1) is a motor vehicle of the second
20 division that: (A) is a self-contained motor vehicle designed
21 or permanently converted to provide living quarters for
22 recreational, camping, or travel use, with direct walk through
23 access to the living quarters from the driver's seat; (B) is of
24 the van configuration designed for the transportation of not
25 less than 7 nor more than 16 passengers; or (C) has a gross
26 vehicle weight rating of 8,000 pounds or less or (2) is a motor

1 vehicle of the first division, "selling price" or "amount of
2 sale" means the consideration received by the lessor pursuant
3 to the lease contract, including amounts due at lease signing
4 and all monthly or other regular payments charged over the term
5 of the lease. Also included in the selling price is any amount
6 received by the lessor from the lessee for the leased vehicle
7 that is not calculated at the time the lease is executed,
8 including, but not limited to, excess mileage charges and
9 charges for excess wear and tear. For sales that occur in
10 Illinois, with respect to any amount received by the lessor
11 from the lessee for the leased vehicle that is not calculated
12 at the time the lease is executed, the lessor who purchased the
13 motor vehicle does not incur the tax imposed by the Use Tax Act
14 on those amounts, and the retailer who makes the retail sale of
15 the motor vehicle to the lessor is not required to collect the
16 tax imposed by the Use Tax Act or to pay the tax imposed by this
17 Act on those amounts. However, the lessor who purchased the
18 motor vehicle assumes the liability for reporting and paying
19 the tax on those amounts directly to the Department in the same
20 form (Illinois Retailers' Occupation Tax, and local retailers'
21 occupation taxes, if applicable) in which the retailer would
22 have reported and paid such tax if the retailer had accounted
23 for the tax to the Department. For amounts received by the
24 lessor from the lessee that are not calculated at the time the
25 lease is executed, the lessor must file the return and pay the
26 tax to the Department by the due date otherwise required by

1 this Act for returns other than transaction returns. If the
2 retailer is entitled under this Act to a discount for
3 collecting and remitting the tax imposed under this Act to the
4 Department with respect to the sale of the motor vehicle to the
5 lessor, then the right to the discount provided in this Act
6 shall be transferred to the lessor with respect to the tax paid
7 by the lessor for any amount received by the lessor from the
8 lessee for the leased vehicle that is not calculated at the
9 time the lease is executed; provided that the discount is only
10 allowed if the return is timely filed and for amounts timely
11 paid. The "selling price" of a motor vehicle that is sold on or
12 after January 1, 2015 ~~July 1, 2014~~ for the purpose of leasing
13 for a defined period of longer than one year shall not be
14 reduced by the value of or credit given for traded-in tangible
15 personal property owned by the lessor, nor shall it be reduced
16 by the value of or credit given for traded-in tangible personal
17 property owned by the lessee, regardless of whether the
18 trade-in value thereof is assigned by the lessee to the lessor.
19 In the case of a motor vehicle that is sold for the purpose of
20 leasing for a defined period of longer than one year, the sale
21 occurs at the time of the delivery of the vehicle, regardless
22 of the due date of any lease payments. A lessor who incurs a
23 Retailers' Occupation Tax liability on the sale of a motor
24 vehicle coming off lease may not take a credit against that
25 liability for the Use Tax the lessor paid upon the purchase of
26 the motor vehicle (or for any tax the lessor paid with respect

1 to any amount received by the lessor from the lessee for the
2 leased vehicle that was not calculated at the time the lease
3 was executed) if the selling price of the motor vehicle at the
4 time of purchase was calculated using the definition of
5 "selling price" as defined in this paragraph. Notwithstanding
6 any other provision of this Act to the contrary, lessors shall
7 file all returns and make all payments required under this
8 paragraph to the Department by electronic means in the manner
9 and form as required by the Department. This paragraph does not
10 apply to leases of motor vehicles for which, at the time the
11 lease is entered into, the term of the lease is not a defined
12 period, including leases with a defined initial period with the
13 option to continue the lease on a month-to-month or other basis
14 beyond the initial defined period.

15 The phrase "like kind and character" shall be liberally
16 construed (including but not limited to any form of motor
17 vehicle for any form of motor vehicle, or any kind of farm or
18 agricultural implement for any other kind of farm or
19 agricultural implement), while not including a kind of item
20 which, if sold at retail by that retailer, would be exempt from
21 retailers' occupation tax and use tax as an isolated or
22 occasional sale.

23 "Gross receipts" from the sales of tangible personal
24 property at retail means the total selling price or the amount
25 of such sales, as hereinbefore defined. In the case of charge
26 and time sales, the amount thereof shall be included only as

1 and when payments are received by the seller. Receipts or other
2 consideration derived by a seller from the sale, transfer or
3 assignment of accounts receivable to a wholly owned subsidiary
4 will not be deemed payments prior to the time the purchaser
5 makes payment on such accounts.

6 "Department" means the Department of Revenue.

7 "Person" means any natural individual, firm, partnership,
8 association, joint stock company, joint adventure, public or
9 private corporation, limited liability company, or a receiver,
10 executor, trustee, guardian or other representative appointed
11 by order of any court.

12 The isolated or occasional sale of tangible personal
13 property at retail by a person who does not hold himself out as
14 being engaged (or who does not habitually engage) in selling
15 such tangible personal property at retail, or a sale through a
16 bulk vending machine, does not constitute engaging in a
17 business of selling such tangible personal property at retail
18 within the meaning of this Act; provided that any person who is
19 engaged in a business which is not subject to the tax imposed
20 by this Act because of involving the sale of or a contract to
21 sell real estate or a construction contract to improve real
22 estate or a construction contract to engineer, install, and
23 maintain an integrated system of products, but who, in the
24 course of conducting such business, transfers tangible
25 personal property to users or consumers in the finished form in
26 which it was purchased, and which does not become real estate

1 or was not engineered and installed, under any provision of a
2 construction contract or real estate sale or real estate sales
3 agreement entered into with some other person arising out of or
4 because of such nontaxable business, is engaged in the business
5 of selling tangible personal property at retail to the extent
6 of the value of the tangible personal property so transferred.
7 If, in such a transaction, a separate charge is made for the
8 tangible personal property so transferred, the value of such
9 property, for the purpose of this Act, shall be the amount so
10 separately charged, but not less than the cost of such property
11 to the transferor; if no separate charge is made, the value of
12 such property, for the purposes of this Act, is the cost to the
13 transferor of such tangible personal property. Construction
14 contracts for the improvement of real estate consisting of
15 engineering, installation, and maintenance of voice, data,
16 video, security, and all telecommunication systems do not
17 constitute engaging in a business of selling tangible personal
18 property at retail within the meaning of this Act if they are
19 sold at one specified contract price.

20 A person who holds himself or herself out as being engaged
21 (or who habitually engages) in selling tangible personal
22 property at retail is a person engaged in the business of
23 selling tangible personal property at retail hereunder with
24 respect to such sales (and not primarily in a service
25 occupation) notwithstanding the fact that such person designs
26 and produces such tangible personal property on special order

1 for the purchaser and in such a way as to render the property
2 of value only to such purchaser, if such tangible personal
3 property so produced on special order serves substantially the
4 same function as stock or standard items of tangible personal
5 property that are sold at retail.

6 Persons who engage in the business of transferring tangible
7 personal property upon the redemption of trading stamps are
8 engaged in the business of selling such property at retail and
9 shall be liable for and shall pay the tax imposed by this Act
10 on the basis of the retail value of the property transferred
11 upon redemption of such stamps.

12 "Bulk vending machine" means a vending machine, containing
13 unsorted confections, nuts, toys, or other items designed
14 primarily to be used or played with by children which, when a
15 coin or coins of a denomination not larger than \$0.50 are
16 inserted, are dispensed in equal portions, at random and
17 without selection by the customer.

18 (Source: P.A. 95-723, eff. 6-23-08; 09800HB2317enr.)

19 Section 15. The Illinois Vehicle Code is amended by
20 changing Section 5-501 as follows:

21 (625 ILCS 5/5-501) (from Ch. 95 1/2, par. 5-501)

22 Sec. 5-501. Denial, suspension or revocation or
23 cancellation of a license.

24 (a) The license of a person issued under this Chapter may

1 be denied, revoked or suspended if the Secretary of State finds
2 that the applicant, or the officer, director, shareholder
3 having a ten percent or greater ownership interest in the
4 corporation, owner, partner, trustee, manager, employee or the
5 licensee has:

6 1. Violated this Act;

7 2. Made any material misrepresentation to the
8 Secretary of State in connection with an application for a
9 license, junking certificate, salvage certificate, title
10 or registration;

11 3. Committed a fraudulent act in connection with
12 selling, bartering, exchanging, offering for sale or
13 otherwise dealing in vehicles, chassis, essential parts,
14 or vehicle shells;

15 4. As a new vehicle dealer has no contract with a
16 manufacturer or enfranchised distributor to sell that new
17 vehicle in this State;

18 5. Not maintained an established place of business as
19 defined in this Code;

20 6. Failed to file or produce for the Secretary of State
21 any application, report, document or other pertinent
22 books, records, documents, letters, contracts, required to
23 be filed or produced under this Code or any rule or
24 regulation made by the Secretary of State pursuant to this
25 Code;

26 7. Previously had, within 3 years, such a license

1 denied, suspended, revoked, or cancelled under the
2 provisions of subsection (c) (2) of this Section;

3 8. Has committed in any calendar year 3 or more
4 violations, as determined in any civil or criminal
5 proceeding, of any one or more of the following Acts:

6 a. the "Consumer Finance Act";

7 b. the "Consumer Installment Loan Act";

8 c. the "Retail Installment Sales Act";

9 d. the "Motor Vehicle Retail Installment Sales
10 Act";

11 e. "An Act in relation to the rate of interest and
12 other charges in connection with sales on credit and
13 the lending of money", approved May 24, 1879, as
14 amended;

15 f. "An Act to promote the welfare of wage-earners
16 by regulating the assignment of wages, and prescribing
17 a penalty for the violation thereof", approved July 1,
18 1935, as amended;

19 g. Part 8 of Article XII of the Code of Civil
20 Procedure; or

21 h. the "Consumer Fraud Act";

22 9. Failed to pay any fees or taxes due under this Act,
23 or has failed to transmit any fees or taxes received by him
24 for transmittal by him to the Secretary of State or the
25 State of Illinois;

26 10. Converted an abandoned vehicle;

1 11. Used a vehicle identification plate or number
2 assigned to a vehicle other than the one to which
3 originally assigned;

4 12. Violated the provisions of Chapter 5 of this Act,
5 as amended;

6 13. Violated the provisions of Chapter 4 of this Act,
7 as amended;

8 14. Violated the provisions of Chapter 3 of this Act,
9 as amended;

10 15. Violated Section 21-2 of the Criminal Code of 1961
11 or the Criminal Code of 2012, Criminal Trespass to
12 Vehicles;

13 16. Made or concealed a material fact in connection
14 with his application for a license;

15 17. Acted in the capacity of a person licensed or acted
16 as a licensee under this Chapter without having a license
17 therefor;

18 18. Failed to pay, within 90 days after a final
19 judgment, any fines assessed against the licensee pursuant
20 to an action brought under Section 5-404;

21 19. Failed to pay the Dealer Recovery Trust Fund fee
22 under Section 5-102.7 of this Code;

23 20. Failed to pay, within 90 days after notice has been
24 given, any fine or fee owed as a result of an
25 administrative citation issued by the Secretary under this
26 Code.

1 (b) In addition to other grounds specified in this Chapter,
2 the Secretary of State, on complaint of the Department of
3 Revenue, shall refuse the issuance or renewal of a license, or
4 suspend or revoke such license, for any of the following
5 violations of the "Retailers' Occupation Tax Act", the tax
6 imposed on corporations under subsection (b) of Section 201 of
7 the Illinois Income Tax Act, the Personal Property Tax
8 Replacement Income Tax imposed under subsections (c) and (d) of
9 Section 201 of the Illinois Income Tax Act, or the tax imposed
10 under Section 704A of the Illinois Income Tax Act:

- 11 1. Failure to make a tax return;
- 12 2. The filing of a fraudulent return;
- 13 3. Failure to pay all or part of any tax or penalty
14 finally determined to be due;
- 15 4. Failure to comply with the bonding requirements of
16 the "Retailers' Occupation Tax Act".

17 (b-1) In addition to other grounds specified in this
18 Chapter, the Secretary of State, on complaint of the Motor
19 Vehicle Review Board, shall refuse the issuance or renewal of a
20 license, or suspend or revoke that license, if costs or fees
21 assessed under Section 29 or Section 30 of the Motor Vehicle
22 Franchise Act have remained unpaid for a period in excess of 90
23 days after the licensee received from the Motor Vehicle Board a
24 second notice and demand for the costs or fees. The Motor
25 Vehicle Review Board must send the licensee written notice and
26 demand for payment of the fees or costs at least 2 times, and

1 the second notice and demand must be sent by certified mail.

2 (c) Cancellation of a license.

3 1. The license of a person issued under this Chapter
4 may be cancelled by the Secretary of State prior to its
5 expiration in any of the following situations:

6 A. When a license is voluntarily surrendered, by
7 the licensed person; or

8 B. If the business enterprise is a sole
9 proprietorship, which is not a franchised dealership,
10 when the sole proprietor dies or is imprisoned for any
11 period of time exceeding 30 days; or

12 C. If the license was issued to the wrong person or
13 corporation, or contains an error on its face. If any
14 person above whose license has been cancelled wishes to
15 apply for another license, whether during the same
16 license year or any other year, that person shall be
17 treated as any other new applicant and the cancellation
18 of the person's prior license shall not, in and of
19 itself, be a bar to the issuance of a new license.

20 2. The license of a person issued under this Chapter
21 may be cancelled without a hearing when the Secretary of
22 State is notified that the applicant, or any officer,
23 director, shareholder having a 10 per cent or greater
24 ownership interest in the corporation, owner, partner,
25 trustee, manager, employee or member of the applicant or
26 the licensee has been convicted of any felony involving the

1 selling, bartering, exchanging, offering for sale, or
2 otherwise dealing in vehicles, chassis, essential parts,
3 vehicle shells, or ownership documents relating to any of
4 the above items.

5 (Source: P.A. 97-480, eff. 10-1-11; 97-838, eff. 7-20-12;
6 97-1150, eff. 1-25-13.)

7 Section 99. Effective date. This Act takes effect upon
8 becoming law.".